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MAR 31 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

NO. 612.

EDWARD SPEICE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.)

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

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Printed by Authority of the State of Illinois

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BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

THE QUESTIONS PRESENTED.

The questions presented are two:

1. WAS THERE SUFFICIENT EVIDENCE IN THE REPORT TO SUPPORT THE TRIAL COURT'S FINDING THAT PETITIONER'S WIFE CONSENTED TO THE SEARCH OF THE HOME JOINTLY OCCUPIED BY THEM AS HUSBAND AND WIFE, WAS NOT ONLY VOLUNTARILY BUT WILLINGLY GIVEN?

2. IF THE ANSWER TO THIS QUESTION IS "YES" DOES ILLINOIS' RULE THAT A WIFE MAY VOLUNTARILY AUTHORIZE THE SEARCH OF HER AND HER HUSBAND'S HOME AND CONSENT TO THE SEIZURE OF STOLEN PROPERTY, DENY DUE PROCESS WHERE THE WIFE'S CONSENT IS NOT ONLY VOLUNTARILY BUT WILLINGLY GIVEN?

RESPONDENT'S ADDITIONAL STATEMENT OF THE CASE.

Petitioner's Statement of the case (*Petition for certiorari*, pp. 5-7) omits all mention of the evidence upon which the trial court admitted and the Supreme Court of Illinois sustained the trial court's admission of the property, all of which was admittedly stolen, upon which evidence petitioner's conviction rests.

Indeed, since petitioner's Statement of the Case so seriously suppresses and distorts the evidence as virtually to falsify the record, in this case, one of the grounds upon which Illinois opposes the grant of *certiorari* is that, absent some considerations of National moment and import that transcend the interests in this case, *certiorari* should be denied if for no other reason than that writ should not ordinarily be granted upon a false petition.

In Illinois the stenographic transcript of the record on appeal or writ of error is abstracted by counsel for the appellant or plaintiff in error. The abstract will ordinarily be deemed correct unless the appellee or the defendant in error corrects it by "an additional" or "supplemental" abstract.

Petitioner's counsel thus abstracted the testimony of John Willems, a police officer of the City of Chicago, upon whose testimony the trial court admitted the stolen property as lawfully seized and hence competent evidence of petitioner's guilt:

"JOHN WILLEMS, on behalf of the State, testified:

"That he was at detective headquarters, 1211 South State Street and received an anonymous telephone call from a woman who stated, 'you wish to get two guys with some hot property? . . . Well, there are two fellows who took in some property at 2453 West Berteau earlier that evening'. One she knew as Eddie Speice, and the other as Red. She said 'if you want to get these guys, you had better get over here real fast'. She also described the car in which they were riding, a 1950 or '51 grey Plymouth Sedan. After the call he and officers Blanchard and Rothgery went to 2453 Berteau at about 11:20 P. M. He rang the bell and heard a woman's voice say, 'Who is it?' He stated it was the police and she opened the door. He had a conversation with Mrs. Speice at the doorway.

"He asked if her husband was home and she said he was not, but expected him. **She asked the officers to come in and not to stand in the hallway. He asked her if her husband had brought in any property earlier and she said he had and asked if the officers would like to see the property. They went to a bedroom and Mrs. Speice stated that the property was brought in by her husband and Red at about 10:30 that evening.** He saw three portable piano-organs, a portable television set, a brown attache case and an electric welding outfit. **Over objections, the court permitted the witness to testify that Mrs. Speice stated she had an argument earlier that evening about her husband bringing the property into the apartment. Over objections, the officer was permitted to say, 'during the course of the argument, it was brought to light that Edward Speice told her that the stuff was stolen and that he would get the stuff out of the apartment'. Over objections, the officers stated she further said to get the stuff out of the apartment immediately because she doesn't want to get involved with the police and lose her child.**

(Petitioner's counsel objected to all matters which occurred after the entry into the house.)

"The officer further stated he asked Mrs. Speice to describe the vehicle and she stated it was a 1940 or '50 grey Plymouth sedan with a damaged right fender. The officer stated that Mrs. Speice said her husband was coming with more articles within an hour. They then left the house and parked their car a half block west of the residence. At about 2:10 A. M. they saw a 1951 grey Plymouth sedan preparing to park on Berteau. The officers drove up to the car, announced they were police, and told both men they were under arrest. When he first saw the petitioner, Speice was preparing to get out of the automobile. Speice and Kotwasinski were handcuffed and the officer told them they were going to Speice's apartment. They then took Speice and Red to the apartment. The officers advised Mrs. Speice that they had her husband under arrest. They asked Speice where the articles were that they had brought into the apartment and Speice pointed to a bedroom, which was the same bedroom that the officers had been in previously. Officers Rothgery and Blanchard brought articles into the living room.

"Over the objections on the ground that anything subsequent to the entry into the house was immaterial for the purposes of the motion to suppress, the court permitted the officer to state that Speice said, 'Don't take that fan. That don't belong with that stuff. I paid for that stuff. That isn't hot.'

Cross-Examination.

"The officer stated that when he received the phone call the woman refused to identify herself. During all the time the woman was talking with the officer, he did not suggest to any other officer that the call should be traced. After they left Speice's house they waited for approximately two hours for the car described to

drive up to the house. The officer did not remember whether he found any goods on the person of Speice.

"Whereupon, the State rested.

To be sure, petitioner's wife, Patty Lou Speice, categorically denied this conversation, (Abst. 7) and adhered to her denial on cross-examination. (Abst. 7-8.).

Petitioner's Statement of the Case also omits the testimony of Officer Rothgery, which petitioner's counsel thus abstracted in the Supreme Court of Illinois.

"OFFICER ROTHGERY testified for the State:

"That he talked with Mrs. Speice in the corridor of the courtroom prior to the hearing. She told the officer her lawyer advised her to come down so that the divorce papers would be signed by her husband."

ARGUMENT.

I.

THERE WAS EVIDENCE TO SUPPORT THE FINDINGS OF THE TRIAL COURT AND OF THE SUPREME COURT OF ILLINOIS THAT PETITIONERS' WIFE'S CONSENT WAS NOT ONLY VOLUNTARILY BUT WILLINGLY GIVEN.

If the trial court was justified in believing the testimony of two police officers of the City of Chicago, this case, unlike *Amos v. United States*, 255 U. S. 315, is not a case in which coercion may be inferred as a matter of fact or implied as a matter of law from the fact that a woman "consents" to a search by law-enforcing officers of premises occupied jointly by her and her husband as the matrimonial domicile.

In evidence wholly suppressed from the petition for *certiorari* in this case, petitioner's wife "asked the officers to come in and not stand in the hallway." She was asked "If her husband had brought in any property earlier" and she said "He had" and asked *if the officers would like to see the property.*

Unlike a wife who desires but does not have the legal knowledge or moral courage necessary to protect her husband, petitioner's wife *volunteered* that she and her husband had an argument earlier that evening about her husband bringing the property into the apartment and volunteered "he told her that the stuff was stolen and that he would get the stuff out of the apartment." "She had told him to get the stuff out of the apartment." Moreover, on the day of the trial, Mrs. Speice came to the courthouse and told "the officer her lawyer advised her to come down so that the divorce papers would be signed by her husband."

Since the trial court believed this version of the matter, this is not the case of a frightened wife who "consents" in form only to what would otherwise be an unlawful search of her house.

This consent was given by a woman who wanted to get the stuff out of the apartment and get petitioner out of there, too.

In fact, she wanted to divorce and apparently did divorce petitioner shortly after and on account of his stealing and storing property in their joint home.

II:

THE EXTENT TO WHICH A WIFE MAY CONSENT TO AND THEREBY BIND HER HUSBAND BUT FOR HER CONSENT WOULD BE AN UNLAWFUL SEARCH UNDER THE FOURTH AND FOURTEENTH AMENDMENTS IS A MATTER OF ILLINOIS MATRIMONIAL LAW, NOT OF FEDERAL CONSTITUTIONAL LAW.

Wolf v. *Colorado*, U. S. ....., strongly intimated and *Matt* v. *Ohio*, 367 U. S. 643, has now squarely held that a State's use of incriminating evidence that has been seized under circumstances that would have violated the Fourth Amendment had the officers seizing the property been Federal officers, denies due process of law.

We do not ask reconsideration of that recent case; for the concurring and dissenting opinions show that the important question resolved in the *Matt* case has already had primary consideration by all of the members of this court.

But the question of the extent to which a wife (or a husband traditionally the *pater familias*) may bind the other spouse to what would otherwise be a trespass, an illegal

search of premises and seizure of property, even a felonious burglary, is, we submit, still a matter of matrimonial law and thereof of State law, not Federal constitutional law.

Most states do not have the "civil" or "modern Roman" law of "community property." But many States do have such a law.

The extent to which one spouse may bind the other to a debt, a contract or other obligation without the consent of the other spouse, varies from State to State.

> The literal text of the Fourth Amendment confirms the "right of the people to be secure in *their* persons, houses, papers, and effects, against unreasonable searches and seizures." (Emphasis supplied.)

But the extent to which property owned during the continuance of a marriage is wholly that of the husband (as was the case with all property at common law that was not secured to the wife by a trust with some person other than the husband as trustee), is wholly that of the wife (as is still the case in nearly all States in property settled upon the wife by a trust of which the husband is not the sole trustee), or is their joint property, either because the State has chosen to adopt some form of "the law of community property" or for some other reason, and the extent to which the matrimonial relationship confers upon one spouse to waive the property rights of another spouse is, we submit, a matter of the State law of matrimony and property.

Doubtless a rule that sanctioned the search of the premises, the seizure of property and the use of that property as evidence against a "consent" that was in fact coerced or extorted would deny due process.

But where the State holds that a wife who is intent on getting rid of stolen property and getting rid of the hus-

band who stole it may consent to what otherwise would have been an unlawful search of the premises and seizure of the property, no Federal constitutional question is raised.

III.

ABSENT SOME QUESTION OF NATIONAL IMPORTANCE, THIS PETITION SHOULD BE DENIED BECAUSE PETITIONER'S STATEMENT OF FACTS VIRTUALLY FALSIFIES THE RECORD IN THIS CASE.

If this court really believes that this case presents some Federal constitutional question of National moment that should be settled and yet is not likely to come before it for some time, it should utilize its jurisdiction to resolve that question despite the considerations urged under this Point.

But if the court agrees with us that the specific facts of this case do not fairly present a question of National import, then even if this court would otherwise grant its writ of *certiorari*, it should withhold that writ from the petitioner who, not proceeding in *forma pauperis*, but represented by counsel of his own choice, presents a petition that does not even hint at, much less summarize the substance of the only evidence in the record upon which this court's extraordinary and discretionary writ is sought.

CONCLUSION.

For reasons urged in this brief in opposition to the petition for *certiorari*, the Attorney General of Illinois submits that *certiorari* should be denied.

Respectfully submitted,

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